

REMARKS

Reconsideration and withdrawal of the rejections of the Office Action are respectfully requested in view of the amendments and remarks herein.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-44, 47 and 49 are currently pending. Claim 1 has been amended, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments to the claims and the remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments and remarks are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Support for the present amendment is found throughout the specification, and the claims as originally and previously pending. Specifically, support for the amendment to claim 1 can be found on page 17, lines 18-20 of the specification as filed.

II. THE REJECTIONS UNDER 35 U.S.C. §103 ARE OVERCOME

Claims 1-44, 47 and 49 were rejected under 35 U.S.C. §103 as allegedly being unpatentable over Woldhuis (EP 0403030) in view of Rossman (2,109,093). The rejection is respectfully traversed.

Establishing a *prima facie* case of obviousness requires that the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143. The Examiner is respectfully reminded that in order to ground an obviousness rejection, there must be some teaching which would have provided the necessary incentive or motivation for modifying the reference's teachings. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993). As stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): "The mere fact that the prior art may be modified in the manner suggested by the Office Action does not make the modification obvious unless the prior art suggests the desirability of the modification." Also, the Examiner is

respectfully reminded that for the Section 103 rejection to be proper, both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure. *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988). Furthermore, the Supreme Court has recently reaffirmed the factors set out in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18: "[T]he scope and content of the prior art are determined; differences between the prior art and the claims at issue are...ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." *KSR International Co. v. Teleflex Inc.*, 550 U.S. ____ (2007).

Rossman relates to an outer packaging for slices of cheese. As set out in claim 1 of Rossman, this outer packaging is used to:

"completely enclose the assembled slices in a film made of wax-rubber composition...applying pressure to bring the said film into intimate contact throughout the external surface of the said assembled slices and sealing the overlapping portions of the film to exclude access of air to said cheese slices."

By preventing air from having access to the cheese slices the packaging described in Rossman prevents:

"any substantial drying out of the cheese due to loss of the original moisture content" (see page 1, col. 2, lines 8-11).

Thus, the packaging disclosed in Rossman prevents evaporation of water from the cheese into the air. There is no disclosure or suggestion in Rossman to prevent water migration between food materials in a foodstuff as required by the present claims. Nor is there any disclosure in Rossman that addresses the problems caused by osmosis rather than evaporation.

The Examiner has also argued that Rossman teaches prepackaged cheese slices packaged together as a commercial unit and that the cheese slices and the cheese wrapper are coated with the same packaging material made from a wax composition. The Examiner states that the reference of Rossman would have made it obvious to one of ordinary skill in the art to prepackage multiple cheese slices together to form a multi-component foodstuff and augment the teachings of Woldhuis. However, it is clear throughout Rossman that the packaging material

teachings of Woldhuis. However, it is clear throughout Rossman that the packaging material disclosed is to be removed from the cheese rather than form part of a multi-component foodstuff. In particular, Rossman states:

"The slices of cheese can be readily separated from each other after the wrapper is opened and used as desired" (see page 1, col. 2, lines 14-16)

Hence, Applicants submit that Rossman teaches away from providing a multi-component foodstuff with a barrier composition that forms part of the foodstuff and prevents the migration of water between the component food materials. Instead, Rossman consistently relates to providing a packaging material to enclose the external surface of the assembled slices of cheese. Hence, there is no teaching in Rossman that would lead a skilled person to adapt its disclosures to form a multi-component foodstuff as suggested by the Examiner.

Even if, in the unlikely event, a skilled person were to adapt the disclosures of Rossman, this would not result in a multi-component foodstuff as required by the present claims. Such an adaptation would merely result in prepackaged multiple cheese slices. In contrast to the Examiner's suggestion, the present claims require a multi-component foodstuff comprising a first food material and a different second food material wherein the food materials have different water contents. Neither Woldhuis nor Rossman disclose or suggest using a barrier composition to prevent water migration between a first food material and a different second food material wherein the food materials have different water contents. Indeed, both Woldhuis and Rossman fail to mention any food material other than cheese. It is clear that Woldhuis and Rossman are both directed to solving different problems than those solved by the present invention, such that there is no teaching or suggestion that would enable one of skill in the art to modify Woldhuis and/or Rossman to arrive at the present invention. Consequently, reconsideration and withdrawal of the obviousness rejection are respectfully requested.